

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KERRY L. SWITZER, JR.,)
Plaintiff,)
v.) Civil Action No. 1:22-cv-208
FRANKLIN INVESTMENT CORP.,)
Defendant.)

MEMORANDUM ORDER

Plaintiff Kerry L. Switzer has filed this *pro se* civil lawsuit against Franklin Investment Corporation arising out of the Defendant's alleged failure to issue him a W-2 statement for fiscal year 2018. The case was opened on June 30, 2022 and was referred to United States Magistrate Judge Richard A. Lanzillo for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), Federal Rule of Civil Procedure 72(b), and the Local Rules for Magistrate Judges.

Plaintiff's operative pleading at this juncture is his Amended Complaint, which sets forth three causes of action. ECF No. 23. Plaintiff's first claim is predicated on an alleged violation of 26 C.F.R. §301.6721 and alleges a "[f]ailure to file correct information returns, and [sic] provide W-2 to the Plaintiff within the federal guidelines." ECF No.23. His second claim alleges a violation of 18 U.S.C. §128 for "[f]raud and related activity in connection with identification documents, authentication features, and information." His third claim involves allegations of identity theft under 18 Pa. C.S.A. §4120.

On December 8, 2022, the Defendant filed a motion to dismiss the Amended Complaint. ECF No. 24. Plaintiff filed responses on December 15, 2022 and January 10, 2023. ECF Nos. 29, 32. The matter is now ripe for adjudication.

On January 31, 2023, Judge Lanzillo issued a Report and Recommendation (“R&R”) in which he concluded that Defendant’s motion to dismiss should be granted and the Amended Complaint should be dismissed with prejudice. ECF No. 33. As to the first claim, the Magistrate Judge noted there is no private cause of action to recover damages for a belatedly issued W-2 form, although the IRS can assess a monetary penalty under 26 U.S.C. §6722. *See* ECF No. 33 at 6 (citing authority). As to Plaintiff’s second claim, the Magistrate Judge observed that 18 U.S.C. §1028 is a criminal statute that does not authorize any private right of action. *See id.* (citing authority). As to the third claim, the Magistrate Judge found that there were no factual allegations in the Amended Complaint to establish the Defendant’s unlawful possession of Plaintiff’s identifying information, nor could such circumstances be plausibly alleged. *See id.* at 7 (citing authority). Because Judge Lanzillo found these defects irremediable, he recommended that the claims be dismissed with prejudice. *See id.* at 7-8.

Objections to the R&R were due to be filed on or before February 17, 2023. To date, no objections have been received by the Court.

Accordingly, after *de novo* review of the Amended Complaint, the Defendant’s motion to dismiss and Plaintiff’s responses thereto, along with the Magistrate Judge’s Report and Recommendation, the following Order is entered:

NOW, this 28th day of February, 2023, IT IS ORDERED that Defendant Franklin Investment Corporation’s motion to dismiss, ECF No. [24], shall be, and hereby is, GRANTED.

Inasmuch as further amendment will not cure the defects in Plaintiff's claims, IT IS ORDERED that the Amended Complaint shall be, and hereby is, DISMISSED with prejudice.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, dated January 31, 2023, ECF No. [33], is adopted as the opinion of this Court.

There being no further claims pending before the Court in this civil action, the Clerk is directed to mark this case "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge